IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1091/2005

Decided on.21.8.2007

State of H.P. and others.. **…Petitioners.**

Versus

Nag Dev. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the petitioner : **Mr. M. S Chandel, Advocate General with Ms. Meenakashi Sharma, Deputy Advocate General.**

For the respondent **Mr. Vinod Thakur, Advocate.**

Rajiv Sharma, J.

A challenge has been laid by the petitioner to the award dated 23.2.2005 passed by the H.P. Labour Court-cum-Industrial Tribunal, Dharamshala in reference No. 217/2002 (RBT No.498/2004).

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the action of the 1. Director, Ayurveda, Government of H.P. and 2. The Manager, Ayurvedic Pharmacy, Jogindernagar, District Mandi to retrench the services of Shri Nag Dev son of Narangu Ram w.e.f. 23.10.1996 and then not offering the job to him while appointing new persons as per the provisions of the Section 25-G and 25-H of the Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits the above workman is entitled to?"**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

In sequel to the reference made by the State Government, the respondent (hereinafter referred to as the workman for convenience sake) filed his statement of claim. The petitioners No.2 and 3 filed separate replies to the statement of claim. The Labour Court on the basis of the pleadings of the parties and the evidence led by them answered the reference in affirmative on 23.2.2005.

The learned Advocate General had argued that the award dated 23.2.2005 is not sustainable in the eyes of law since the workman had not completed 240 days preceding block of 12 calendar months at the time of his dis-engagement on 23.10.1996.

Mr. Vinod Thakur, Advocate had supported the award dated 23.2.2005 passed by the Labour Court.

I have heard the learned counsel for the parties and perused the record.

The workman was engaged initially on daily wage basis on muster roll in the year 1991. He was interviewed by the employer along with S/Shri Charan Singh, Bhagat Ram and Sohan Lal in the year 1992, pursuant to which he was directed to work as whole time daily wage labourer upto 22nd October, 1996. The workman had primarily contended before the Labour Court as per the averments made in the statement of claim that his retrenchment has been effected on 23rd October, 1996 in violation of Sections 25 (G) and (H) of the Industrial Disputes Act, 1947 since the persons junior to him were permitted to be retained at the time of retrenchment and two workmen, namely, S/Shri Amar Singh and Desh Raj were engaged without offering the work to him after his dis-engagement.

The learned Advocate General had strenuously contended that the workman was not entitled to the benefits flowing under section 25 (G) and (H) of the industrial Disputes Act, 1947 since he had not completed 240

days in a 12 calendar months preceding his retrenchment i.e. 22nd October, 1996. This question is no more *res integra* in view of the definite pronouncement of law by the Hon'ble Supreme Court in ***Central Bank of India Versus S.Satyam and others,*** (1996) 5 SCC 419 wherein it has been held that it is not necessary for the workman to complete 240 days in one year to get benefit of section 25 (G) and (H) of the Industrial Disputes Act. Their Lordships have held as under:

> **"The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of 'retrenchment' given in section 2 (oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman…who has been in continuous service for not less than one year". Thus, section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman…who has been in continuous service for not less than one year:. It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the**

principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."

The Apex Court has held in ***Samishta Dube Versus City Board, Etawah and another***, 1999 (2) SLR 51 that the principle of last come first go should ordinarily be followed even in the case of daily wagers unless for reasons to be recorded the employer retrenches any other person. Their Lordships of the Supreme Court have held as under:

"We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court be treated as valid. Section 6-P of the U.P. Act (which corresponds to Section 25 G of the Central Act of 1947) states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf – the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person. Now this provision is not controlled by conditions as to length of service contained in Section 6 (N) (which corresponds to Section 25F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh vs. Presiding Officer (1996 Suppl. SCC 679) in a matter which arise under this very Section 6-P of the U.P. Act, it was so held. Hence the High

Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. (See also in this connection Central Bank of India vs. S. Satyam and others 1996 (5) SCC 419): [1996(4) SLR (SC)].

Nor was the High Court correct in stating that no rule of seniority was applicable to daily wagers. There is no such restriction in Section 6P of the U.P. Act read with Section 2(z) of the U.P. Act which defines 'workman'.

It is true that the rule of 'first come, last go' in Section 6-P could be deviated from by an employer because the section uses the word 'ordinarily'. It is, therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or less of confidence etc. as held in M/s Swadesmitran Limited, Madras vs. Their Workmen (1960 (3) SCR 144). But the burden will then on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act."

Thus in view of the law laid down by the Hon'ble Supreme Court, this Court has to analyze whether the workman was entitled to the protection of 25 (G) and (H) of the Industrial Disputes Act. One Mr. Praveen Sharma, Senior Assistant has appeared as RW-1 on behalf of the employer. He had admitted in his cross-examination that the workman was appointed whole timer @ Rs. 22/- per day from the very beginning and Shri Amar Singh son of Shri Mohan Singh and Sh. Desh Raj were engaged as Daily Wages Beldar on 23.4.1999. He had also testified that the Department was engaging the Beldars on daily wages basis after the dis-engagement of the workman. He had also admitted that S/Shri

Charan Singh, Sohan Lal and Bhagat Ram have been re-engaged as per the order of the H.P. State Administrative Tribunal.

The employer had also taken the stand before the Labour Court that the workman himself had abandoned the job since he was not ready and willing to work on job rate basis. This plea raised by the employer was demolished by RW-1, Sh. Parveen Sharma, who in his cross-examination has denied that the workman was removed from the service as the job rate was not acceptable to him.

The Labour Court though had categorically held that the workman was entitled to the protection of section 25 G of the Industrial Disputes Act, 1947 but no finding has been given whether the workmen, namely, S/Sh. Charan Singh, Bhagat Ram and Sohan Lal were junior to the workman. It was necessary for the Labour Court to give a positive finding whether any workman junior to the respondent-workman was retained at the time of his dis-engagement on 23rd October, 1996.

As far as the findings recorded by the Labour Court with regard to the violation of section 25 (H) of the Industrial Disputes Act are concerned, the same are liable to be upheld by this Court. The workman was engaged in the year 1992 and two workmen, namely, S/Sh. Amar Singh and Desh Raj were engaged in the year 1999. It was necessary for the employer to offer the work to the workman before the same was offered to S/Sh. Amar Singh and Desh Raj. RW-1 Sh. Parveen Sharma in his cross-examination had admitted that after the retrenchment of the workman on 23rd October, 1996, the department had been engaging the fresh hands. The employer has not proved that the workman had voluntarily abandoned his job. To the contrary, he was keen to be reinstated.

The upshot of the above discussion is that:

i. **the Labour Court had come to a wrong conclusion that the workman was entitled to the protection of Section 25 (G) of the Industrial Disputes Act, 1947;**
ii. **the Labour Court had arrived at a correct finding that the workman was entitled to section 25 (H) of the Industrial Disputes Act, 1947;**
iii. **it is not necessary for the workman to complete 240 days in one year to get the protection of section 25 (G) and (H) of the industrial Disputes Act, 1947.**

Accordingly the writ petition is disposed of and the award dated 23.2.2005 is modified to the extent that the finding recorded by it that the workman was entitled to the protection of section 25 (G) of the Industrial Disputes Act, 1947 is not sustainable. The award passed by the Labour Court to the extent that the workman is entitled to the protection of section 25 (H) of the Industrial Disputes Act, 1947 is upheld with the directions for reinstatement of the workman with 50% back wages.

There shall be no order as to costs.

(Rajiv Sharma), Judge

August 21, 2007
Awasthi